

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:)	
)	CHAPTER 11
U.S. TOBACCO COOPERATIVE, INC., et al. ¹)	
)	Case No. 21-01511-JNC
Debtors.)	

**MOTION TO RECOGNIZE LEWIS CERTIFIED CLASS AND APPOINT CLASS
REPRESENTATIVES AS AN OFFICIAL COMMITTEE OF CREDITORS PURSUANT
TO 11 U.S.C. §1102**

NOW COMES the Certified Class Action representing the approximately 800,776 membership interests of current and former tobacco producers and members, certified in those certain actions pending in Wake County Superior Court, Case Nos. 05-CVS-188 and 05-CVS-1938, titled *Dan Lewis and Daniel H. Lewis Farms, Inc., et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United State Tobacco Cooperative, Inc.)* (the “Lewis Certified Class”) and hereby moves this Court pursuant to 11 U.S.C §1102 for an Order recognizing the Lewis Certified Class and appointing the Class Representatives of the Lewis Certified Class as an official committee. In support of this Motion, the Lewis Certified Class respectfully shows the Court the following:

BACKGROUND

1. The Debtors in these cases filed voluntary Chapter 11 bankruptcy petitions on the afternoon of July 7, 2021 (“Petition Date”), immediately prior to a hearing scheduled at 2:00

¹ The Debtors in these Chapter 11 Cases are the following entities (the last four digits of each Debtor’s respective federal tax identification number, if any, follow in parentheses): U.S. Tobacco Cooperative, Inc. (4598); U.S. Flue-Cured Tobacco Growers, Inc. (9823); Premier Manufacturing, Inc. (3251); Franchise Wholesale Co., L.L.C. (7518); Big South Distribution, LLC (4164); and King Maker Marketing, Inc. (4533). According to the Debtors’ pleadings, the Debtors’ corporate headquarters are located at 1304 Annapolis Drive, Raleigh, NC 27608.

p.m. in that certain litigation pending in Wake County Superior Court, Case Nos. 05-CVS-188 and 05-CVS-1938, titled *Dan Lewis and Daniel H. Lewis Farms, Inc., et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United State Tobacco Cooperative, Inc.)* (the “Lewis Class Litigation”).

2. U.S. Tobacco Cooperative, Inc. (“Cooperative”) is a North Carolina nonprofit cooperative formed on June 1, 1946, as Flue Cured Tobacco Cooperative Stabilization Corporation.

3. The Lewis Certified Class is an almost 17-year-old certified class action commenced in early 2005 in Wake County, North Carolina to secure the interests of tobacco farmers who were members of the Cooperative from 1946 through 2004 residing in 6 states (Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida). Its court-approved Class Representatives and court-approved Class Counsel represent approximately 800,776 membership interests in the Cooperative which were wrongfully cancelled (as determined in the Lewis Class Litigation) by the Cooperative in 2004-05 and whose funds have been wrongfully possessed and maintained (converted and covered by a constructive trust per the state court) by the Cooperative since that time.

4. The Lewis Certified Class was certified as a class by Wake County Superior Court on February 7, 2014 pursuant to an Amended Order on Class Certification.

5. This class certification of the Lewis Certified Class, including the adequacy of the class representatives and of class counsel, was unanimously affirmed by the North Carolina Supreme Court in an opinion dated December 21, 2016, *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 794 S.E.2d 699 (2016).

6. The Lewis Certified Class requests that this Court recognize the certified class status conferred by the North Carolina courts.

7. As part of the class certification process for the Lewis Certified Class, the North Carolina courts approved the following individuals and entities as representatives for the Lewis Certified Class (collectively the “Lewis Certified Class Representatives”):

Dan Lewis and Daniel H. Lewis Farms, Inc.
George Abbot,
Robert C. Boyette and Boyette Farms, Inc.
Kyle A. Cox
C. Monroe Enzor, Jr., Executor of the Estate of Crawford Monroe Enzor, Sr.
Archie Hill
Kendall Hill
Whitney E. King
Cray Milligan
Richard Renegar
Linwood Scott, Jr. and Scott Farms, Inc.
Orville Wiggins
Alford James Worley, Executor of the Estate of Dennis Anderson
Chandler Worley
Harold Wright²

8. As part of the class certification process for the Lewis Certified Class, the North Carolina courts designated and approved Class Counsel, including co-lead class counsel.

9. The selection of the Lewis Certified Class Representatives by the North Carolina courts was in all respects fair and proper, and fairly chosen.

10. The North Carolina Courts found both the Lewis Certified Class Representatives and designed Class Counsel for the Lewis Certified Class to be adequate and fair representatives of the Lewis Certified Class.

11. The Lewis Certified Class Representatives are representative of the claims to be represented in the Lewis Certified Class.

² Since approval, George Abbot, Archie Hill and Harold Wright have passed away. At this time, their executors have not been substituted as Lewis Certified Class Representatives.

12. The Lewis Certified Class Representatives can adequately represent the interests of the Lewis Certified Class as an official committee of creditors pursuant to 11 U.S.C. §1102.

13. The Lewis Certified Class and the Lewis Certified Class Representatives will continue operate in accordance with the law of North Carolina courts in respect of their duties as class representatives.

14. The best interests of the Debtors, the Lewis Certified Class and the bankruptcy estate would be served by appointing the Lewis Certified Class Representatives as an official committee of creditors pursuant to 11 U.S.C. §1102.

15. It would be unfair for a constituency of the magnitude of the Lewis Certified Class to not receive official committee status in this bankruptcy proceeding. Section 1102 of the Bankruptcy Code was enacted to prevent exactly this result. 11 U.S.C. §1102(b) expressly recognizes that an official committee may consist of a “committee” (i.e., Lewis Certified Class Representatives) organized prior to the Petition Date.

16. The Bankruptcy Administrator’s Office has indicated to the Lewis Certified Class that it supports this motion and the relief requested herein.

WHEREFORE, the Lewis Certified Class respectfully requests that this Court enter an Order (i) recognizing the Lewis Certified Class as certified by the North Carolina courts; (ii) appointing the Lewis Certified Class Representatives as an official committee of creditors under 11 U.S.C. §1102 to represent the Lewis Certified Class; and (iii) granting the Lewis Certified Class such other and further relief as to which it may be entitled.

This the 14th day of July, 2021.

s/Kevin L. Sink

Kevin L. Sink

NC State Bar No. 21041

The Law Office of Kevin L. Sink, PLLC

3700 Glenwood Avenue, Suite 500

Raleigh, NC 27612

Telephone: 919-589-7985

Counsel for the Class

s/W. Sidney Aldridge

W. Sidney Aldridge

NC State Bar No. 7579

Nicholls & Crampton, P.A.

P.O. Box 18237

Raleigh, NC 27619

Telephone: 919-781-1311

Counsel for the Class

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **MOTION TO RECOGNIZE LEWIS CERTIFIED CLASS AND APPOINT CLASS REPRESENTATIVES AS AN OFFICIAL COMMITTEE OF CREDITORS PURSUANT TO 11 U.S.C. §1102** was served this day via CM/ECF service on the following:

VIA CM/ECF EMAIL SERVICE ONLY

Marjorie K. Lynch
Bankruptcy Administrator
434 Fayetteville Street, Suite 640
Raleigh, NC 27601

Rebecca F. Redwine
Jason L. Hendren
Counsel for the Debtors

Mark E. Felger
Simon E. Fraser
David R. Doyle
Christina M. Sanfilippo
Counsel for the Debtors

Nikolaus F. Schandlbauer
James B. Angell
Counsel for Bank Group

This the 14th day of July, 2021

s/Kevin L. Sink
Kevin L. Sink
NC State Bar No. 21041
The Law Office of Kevin L. Sink, PLLC
3700 Glenwood Avenue, Suite 500
Raleigh, NC 27612
Telephone: 919-589-7985